## SHER TREMONTE LLP

April 9, 2018

## BY EMAIL UNDER SEAL

The Honorable Ronnie Abrams
United States District Judge
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: United States v. Galanis et al., 16-cr-371 (RA)

## Dear Judge Abrams:

On March 28, 2018, defendants requested an extension to file their affirmative motions *in limine*. Dkt. 361. On March 30, 2018, the Court granted that extension, permitting defendants to file their affirmative motions in limine by April 11, 2018. Therefore, this motion only addresses Mr. Hirst's opposition to the government's affirmative motions *in limine*. Mr. Hirst's affirmative motions *in limine* will be filed on or before April 11.

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embarrassing to explain. The Court should apply the Rules of Evidence consistently and, if the Gerova arrests and convictions are admitted, also admit

As the government correctly points out, "the standard of admissibility when a criminal defendant offers similar acts evidence as a shield need not be as restrictive as when a prosecutor uses such evidence as a sword." *United States v. Aboumoussallem*, 726 F.2d 906, 911 (2d Cir. 1984). This is because "risks of prejudice are normally absent when the defendant offers similar acts evidence of a third party to prove some fact pertinent to the defense." *Id.* Thus, the only question that remains is whether the evidence "is relevant to the existence or non-existence of some fact pertinent to the defense." *Id.* at 912. The relevance standard is, of course, a liberal one, namely if the fact "has any tendency to make a fact more or less probable" and "is of consequence in determining the action." Fed. R. Evid. 401. Here, if the government is permitted to introduce the Gerova arrests and convictions to show a past "relationship of trust" between Jason and Mr. Hirst or to establish Mr. Hirst's knowledge and intent with respect to the charged crimes,

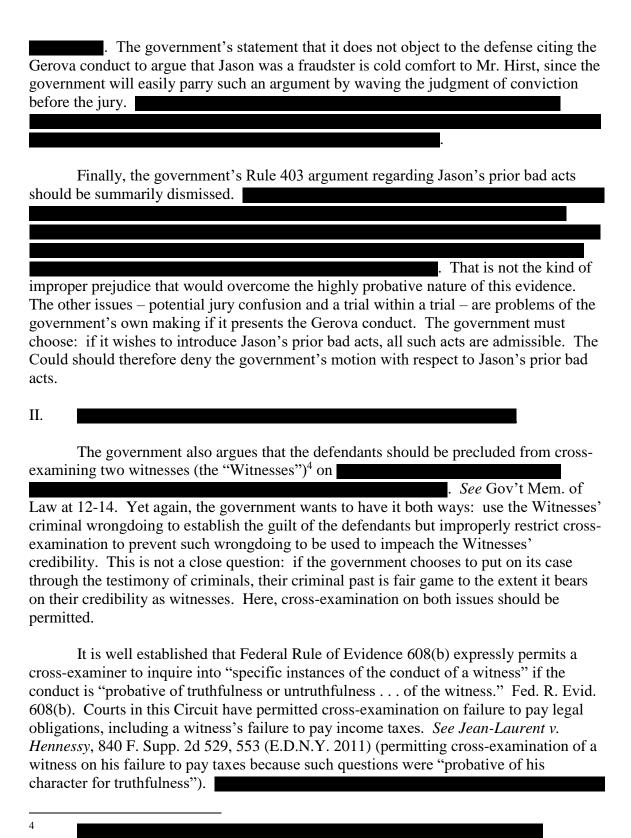
As set forth in our opposition to the government's motion to admit evidence pursuant to Rule 404(b), the Gerova conduct is *not* admissible for those purposes, and, to the extent it is admissible to show knowledge and intent, the government may only introduce the Gerova conduct if Mr. Hirst puts those issues in dispute. *See* Hirst Letter, dated Mar. 23, 2018, ECF No. 351.

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It is important to note that the jury in the Gerova case was instructed on a conscious avoidance theory; thus, the fact that the jury returned a conviction does not necessarily mean that a finding was made as to Mr. Hirst's knowledge of any fraudulent scheme. The absence of such a finding makes it even more important that, if the government is permitted to introduce the Gerova conviction against Mr. Hirst in this case, he be able to explain the context,

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stifying falsely and in favor etween th[is] Witness[] and	be permitted to consider Witness 1's' "possible motion of the government," including any and all agreemed the government to the extent that the Witness[], in all not be held liable for these past crimes." <i>United S</i> 08 (S.D.N.Y. 1996).	ents exchar
	Respectfully submitted,  /s/ Michael Tremonte Noam Biale Emma Spiro SHER TREMONTE LLP  /s/ Barry Levin, Esq.	
: All Counsel (by ema	il)	